IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 720 OF 2019

Mr. Rohan Lobo,
Sole Proprietor of M/s Synergy Trade Exchange,
having office at Flat No. A-005,
House of Lords, Miramar, Goa ... Petitioner

Versus

1. State of Goa,
   through its Chief Secretary,
   having office at Secretariat,
   Porvorim Goa.

2. Commissioner of Commercial Taxes,
   Government of Goa,
   Vikrikar Bhavan,
   Panaji Goa.

3. Asst. Commercial Tax Officer,
   Commercial Tax Office,
   Government of Goa,
   Panaji Ward, Panaji Goa. ... Respondents

Mr. Yogesh V. Nadkarni and Mr. S. Kamat, Advocates for the Petitioner.

Mr. D. Pangam, Advocate General with Ms. Maria Simone Judith Correia, Addl. Government Advocate for the Respondents.

Coram:- M. S. SONAK &
C. V. BHADANG, JJ.
Date:- 19th November, 2019

<u>ORAL JUDGMENT</u> (Per M. S. Sonak, J)

Affidavit in reply on behalf of the Respondents is taken on record.

2. Heard Mr. Y. Nadkarni, learned counsel for the Petitioner and Mr. D. Pangam, learned Advocate General alongwith Ms. M. Correia, learned Addl. Government Advocate for the Respondents.

3. On 27th August, 2019, we had made the following order :

> "*Heard Mr. Y.V. Nadkarni, learned Advocate for the petitioner and Mr. D.J. Pangam, learned Advocate General with Ms. M. Correia, learned Additional Government Advocate for the respondents.*
>
> *2. The arguable issues are raised, hence Rule.*
>
> *3. The learned Advocate General has submitted that this petition is barred by delay and laches. However, according to us, the claim in this petition is mainly for interest between the period of 2014 to 2017. The petitioner has also placed on record the correspondence done by him with the respondents on the issue of payment interest. Accordingly, we do not deem it appropriate to non suit the petitioner on the ground of any delay or laches. However, we make it clear that this aspect can always been taken into consideration at the stage of moulding of relief, if at the stage of final hearing we are satisfied that some final relief is due to the petitioner."*

4. The issue of actual entitlement of interest stands covered by our judgment and order dated 16th October, 2019 in Writ Petition No.424 of 2018. In terms thereof, the Respondents, will have to be directed to pay to the Petitioner an amount of Rs.54,62,665/-, which constitutes the interest component upto 14th December, 2017. We direct accordingly.

5. Mr. Nadkarni submits that for the period from 14th December, 2017 till the date of actual payment of this interest amount, the Respondents must be directed to pay further interest at the rate of 12% per annum. He submits that there was absolutely no justification to withhold the interest amount of Rs.54,62,665/- which was due as on 14th December, 2017.

6. Mr. D. Pangam, learned Advocate General points out that there was a serious dispute as regards the interpretation of provisions of Goa Value Added Tax Act, 2005. He submits that it is only by judgment and order dated 16th October, 2019, this dispute stands resolved. He points out that this statement is also without prejudice to the right of the State to consider challenging the judgment and order dated 16th October, 2019 in Writ Petition No.424 of 2018. He submits that in such circumstances, the Petitioner cannot claim any further interest on the interest amount. He also submits that this petition is in fact barred by delay and laches and if at all any interest has to be ordered, then, the same

should be considered from the date of institution of this petition. Again, he clarifies that this statement is clearly without prejudice.

7. Even if the aforesaid contentions raised by the learned Advocate General are to be taken into consideration, we do not see how the Respondents can avoid payment of at least some interest on the amount of Rs. 54,62,665/- which became due to the Petitioner as on 14th December 2017. It is not as if the parties have to be made to institute the petitions before the Court in order to recover their dues. In this case, the Petitioner was making representations claiming *inter alia* for refund and interest. No doubt, the representation for payment of interest was rejected on 20th June,2018 and this petition was instituted on 2nd August, 2019.

8. Taking into consideration all the aforesaid circumstances, the Petitioner's claim for interest at the rate of 12% per annum certainly cannot be accepted. So also, the Petitioner cannot insist for interest at the rate of 8% per annum, which is otherwise statutory prescribed rate of interest in terms of the said Act. Upon cumulative consideration of all the aforesaid circumstances, we feel that the interest at the rate of 4% per annum, will be appropriate in the facts and circumstances of the present case.

9. Accordingly, we direct the Respondents to pay to the Petitioner

the interest amount of Rs.54,62,665/-, as was payable to the Petitioner as on 14th December 2017 together with interest thereon at the rate of 4% per annum to be computed from 14th December, 2017 till the date of actual payment. Necessary computation be made and the amount be paid to the Petitioner within eight weeks from today.

10. Rule in this petition is disposed of in the aforesaid terms. There shall be no order as to costs.

11. All concerned to act on the basis of the authenticated copy of this order.

C. V. BHADANG, J. **M. S. SONAK, J.**

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